IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11714 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHANUBHAI JERAMBHAI MALI

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 11714 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR DP JOSHI, AGP, for Respondents No. 1-3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/02/2002

ORAL JUDGEMENT

1. The petitioner has been detained by an order passed by the Commissioner of Police, Rajkot City, Rajkot, on the 2nd November, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

2. The detaining authority took into consideration three offences registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Patel, learned advocate appearing for the petitioner, contended that a representation was made by the wife of the detenu on the 27th November, 2001, which was received by the detaining authority on the 29th November, 2001. The detaining authority forwarded the representation to the Government on the 1st December, 2001 and the same was received by the Government on the 4th December, 2001. However, the representation was decided by the Government only on the 13th December, 2001 and the same was communicated to the detenu by communication dated the 14th December, 2001. The delay in deciding the representation has affected the right of the detenu of making an effective representation and, therefore, the continued detention is vitiated. She, therefore, urged that the petition may be allowed and the order of detention may be quashed and set aside.

4. Mr. Joshi, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to rival side contentions, petition deserves to be allowed on the ground that there is delay in considering the representation of the detenu. The fact remains that a representation of November 27, 2001 received by the Government on December 4, 2001 was decided on December 13, 2001. During the time between the 4th December and the 13th December, 2001, excepting two holidays on account of Second Saturday and Sunday, there was no holiday. This delay in consideration of the representation would result into infringement of right of the detenu of making an effective representation. Therefore, the continued detention would be vitiated as held by this Court in the case of Anubhai M. Jani v. State of Gujarat, 2000(3) GLR 649. The petition, therefore, deserves to be allowed.

6. In the result, the petition is allowed. The

impugned order of detention dated the 2nd November 2001, passed against the detenu is hereby quashed. The detenu-Bhanubhai Jerambhai Mali is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[ A.L. DAVE, J. ]

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